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DISCUSSION OF CONTRACTS FOR THE EMPLOYMENT OF AGENTS OR THE
PURCHASE OF COVERT SERVICES, SUPPLIES, AND FACILITIES

1. What is a contract? If I say to you, "Will you buy my watch for ten dollars?" and you say, "I will," that is a contract. In other words, a contract may be defined as an agreement between two parties that each shall perform an act.
2. The purpose of writing a contract is simply to state in clear, understandable language what we, the Government, promise to do and what the individual promises to do. Generally, this takes the form of stating the basic compensation or salary, and other benefits which we promise to give the individual, and a statement of the obligations imposed on that individual. The contract is not concerned with operational details of information to be secured, or the methods of securing information.
3. In view of the nature of this organization and the type of funds involved, we are in a position to offer individuals various types of contracts in their relationship to us. There are, however, certain restrictions imposed by law and by internal policies. The Director has set forth in various orders, principally the Confidential Funds Regulations, the limitations on the use of Confidential Funds which, in turn, are reflected in the type contracts which are written. At this time, we shall talk only of covert contracts.

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5. The second division of contracts more directly concerns the branches and the case officers, that is, the contracts with individuals for supplying information or other services. The case officer is directly concerned in that normally he is the point of contact between the individual and CIA. The practical approach is simply this. The case officer has a person who is willing to undertake a certain task. In consideration of performing this task, the case officer assures him that CIA will undertake, in the normal case, to make certain payments. These obligations and undertakings are then reduced to writing. Again such promises must be within the framework of the established procedures and policies of CIA. This office then enters the picture. The case officer explains what he wishes to accomplish. We assist by advising, from a legal standpoint, whether the proposal conforms to laws and CIA regulations and reducing them to writing.
6. Individuals with whom the branches wish to contract may be divided into two general categories, on a legal basis. First, there would be those who occupy the status of an employee of the United States Government. The other category would be those individuals who are not employees and, in the legal sense, are considered independent contractors. An employee is one who performs duties for an employer in such a manner that the employer has the right to direct and control the work to be accomplished, as well as the method by which it is to be accomplished. In the independent contractor relationship, the product is the primary consideration. In other words, a particular individual agrees to supply a piece of information for which he will be paid a stipulated price, upon delivery. For administrative purposes, these individuals are divided into other categories, [REDACTED]
7. It is necessary, for many reasons, to distinguish between an independent contractor and an employer-employee relationship. The fact that an individual occupies the status of an employee of the United States Government automatically confers upon him many benefits, tangible and intangible, which are not possessed by an independent contractor, except on the basis of specific provisions in their contracts. It is possible by a very simple employee contract to create contingent liabilities of the United States Government amounting to hundreds of thousands of dollars. The contingent liabilities are made up of a number of items which will be mentioned below. Generally, it has been felt desirable to limit granting of employee status to as few cases as possible. This policy is based, in part, on the above and, in part, on the experience of wartime activities.

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Where the relationship of employee-employer was implied or stated, the individual concerned felt, in many cases, that he had a continuing claim for recognition of his services. This has resulted in letters in a steady stream pouring into Washington, from all over the world. The substance of most of these is that, having worked for United States intelligence forces during the war, he is entitled to immigration, or a medal, or a certificate, or compensation of some form. These letters are still coming in. It appears obvious that such a situation is not desirable, and it is felt it can be avoided to some extent by limiting employee status and, in the majority of cases, making it clear that we are merely purchasing information or services. The contingent liabilities consist of the following items:

- a. An employee is entitled to the benefits of the United States Employees' Compensation Act for injuries or death sustained while in the performance of duty. These benefits accrue automatically to employees of the United States Government. They include medical care and hospitalization as long as continued treatment is necessary, provided, of course, the injury results while in the performance of duty. If permanent disability results from such an injury, the employee may be authorized to receive \$116.00 per month so long as the disability continues. Where partial disability results, lesser payments are authorized. In special cases, requiring constant care of a nurse or attendant, additional payment may be authorized. In the event of death while in the performance of duty, the widow and children are authorized amounts not to exceed \$116.00 per month. When the children become of age, the payments to the wife are reduced to approximately \$65.00 per month until she remarries. In certain cases, persons dependent for support upon the deceased employee, for example, parents, are entitled to benefits under the Compensation Act. A survey was made some time ago concerning total amounts paid in those cases where death had resulted. It was revealed that in the average case where there was a wife and no children, benefits were paid amounting to \$12,000.00, and, where there were children, the amount paid was \$18,000.00.
- b. The Missing Persons Act is in effect for employees of this organization. That Act was the wartime statute which permitted continuance of pay or allowances where a person is in a missing status, or is otherwise interned, besieged, beleaguered, and so forth. Under that Act, it is required that, where an individual has been missing for one year, a review be made of the case with a view to determining if a finding of death is warranted.

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If the review indicates that a man is still alive, the pay and allowances to which he is entitled, at the time he became missing, may be continued beyond the initial one year period. In other circumstances where it is clear that a man has been killed, an immediate review is required and a finding of death made.

- c. An employee is eligible to secure insurance and hospitalization. He may apply for term insurance with the War Agencies Employees' Protective Association. This is an Association which has its master policy underwritten by the Equitable Life Assurance Company. Insurance may be obtained securely and without revealing names of the insured, through a system of certificates and numbers. This insurance is available at \$12.50 per month premium, for \$10,000.00 insurance, with a double indemnity feature. A seldom used benefit in connection with covert agents is group hospitalization; however, it is available and may be secured upon request from the Confidential Funds Branch.
- d. A covert agent who is an employee may at some later date become a staff employee of the Agency or be employed by another United States Government agency. Because of his status as an employee, he then may be entitled to count as creditable service the entire period which he spent with CIA in a covert capacity. At that time, he would, of course, be required to deposit an amount equal to the retirement deductions which would have been made, with interest.
- e. In addition to the automatic benefits, there are certain optional guarantees which may be afforded employees. Normally, a contract employee is not entitled to leave; however, by specific provision, leave may be authorized, including annual or sick leave. Also, certain types of provisions have been developed for insertion in contracts where it is desired to give the covert employee certain guarantees to induce him to leave his present position and to afford protection in the event of later developments which prohibit his use by CIA. An example of this is the rehabilitation clause contained in career agent contracts. That clause in substance provides that, in the event the employee's usefulness is terminated because of security considerations, efforts will be made by CIA to re-establish him in a position comparable to that which he left to join the organization. There is contained a guarantee, in any event, that salary for a period of one year will be continued to assist in this purpose. Provisions of this nature may be varied to accommodate the existing situation.

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8. In essence, the contract with the so-called independent contractor is very simple and is as follows:

"We agree to buy from you information for which we will pay a stipulated sum."

There has been developed a basic form of such contract to include other provisions which are found to be necessary. Provision is made in some instances for certain types of travel expenses. Generally included is a provision relating to reimbursement for extraordinary expenses, including entertainment and pay of informants and cutouts.

9. In both types of contracts, there is usually a provision that payment will be made by CIA as directed by the individual in a manner acceptable to CIA. This would not appear to have much meaning on the face of it; however, it has been found that detailed instructions concerning transfers of funds are necessary to preserve security of the individual and CIA. Consequently, this simple clause in the contract calls for a detailed examination of payment plans which are put in a memorandum to Special Funds over the signature of the individual concerned. The specific details in each case would be a matter for the case officer to discuss with Special Funds.

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11. Another point in connection with writing these contracts is the matter of pseudonyms. It is assumed that in each case of this type the matter is of a covert nature, and the greatest degree of security is desired; therefore, the practice has been adopted of writing all contracts with covert agents in pseudonym. The question has been raised, "Is the contract legal where other than a real name is used?" The answer is, "Yes." For the protection of all concerned, however, an Acknowledgment of Pseudonym should be executed by the individual. This is a simple statement to the effect that John Doe acknowledged that, in his relations with CIA, "Tom Smith" will be his recognized name. Both names are written, furnishing specimen signatures.
12. We believe that a clear and understandable contract may be written to cover any situation which may arise. No attempt has been made by me to specify all of the details of contracts, since they will be considered in each specific contract. In our opinion, it would be infeasible to establish form contracts and issue them for completion of blanks and signing. We feel that the best method of securing good contracts is for the case officer to bring his contract problem to us, saying, "I want to give my agent this. Will you put it in writing?" Within a reasonable time, we will have ready for him a simple, understandable contract. In addition to the specific items mentioned above which may be included in a contract, other guarantees may be spelled out. For example, in those rare cases where a trip to the United States has been approved, or immigration has been approved, those items may be included in the contract. Caution should be exercised in guarantees of that type, since the difficulties

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involved are numerous. We can put it generally by saying that any promise which we are in a position to fulfill can be, and probably should be, stated in the man's contract.

13. The question may have arisen in the minds of some of you: why do we in this type of business write contracts. There are two parts to the answer. First, the obligations should be in writing in order to preserve continuity and place, once and for all, those obligations in the record. Experience has shown that questions concerning relationships will be brought up months and years after it was thought the relationship was terminated. Also, case officers change; station personnel change. Within the last year, this point was illustrated to me, in that one station was swamped with individuals who came in saying that the former station chief had employed them on a regular basis and that certain payments were due. No contracts or other memoranda evidencing such relationships were present. The administrative difficulties, as well as the security aspects, in that situation, are obvious. From the operational and security standpoint, a contract can be a weapon and a control on the part of CIA. Also, when considering long-term or permanent relationships, the agent is far better satisfied when he can see in writing what is promised to him. I have received direct and indirect word from a number of career agents who were extremely gratified with the type of contracts which were presented to them for signature.
14. The question also arises, "When do we need a contract?" I think the best answer to that question is that, whenever there are to be regular or recurring payments, or where there is to be a continuing relationship with an individual, there should be a contract. It is recognized that in some instances, particularly in the field and in minor stations, the case officer concerned feels it undesirable to have an individual sign a contract for security reasons. In such event, the case officer concerned should write a memorandum for the record, for approval of the station chief, furnishing a copy to the Special Funds officer. Such memorandum would state in brief form what has been promised the individual. While somewhat obvious, I should like to state here that under no circumstances are copies of contracts furnished to individuals. They are permitted to read them, required to sign, and informed that the contract will be held at a safe place for their inspection at any time.

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15. The essential elements to be remembered in connection with contracts may be listed as follows:

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- b. Ascertain what the Government wishes to promise an individual and also have in mind the limitations on what can be promised the individual.
- c. Embody these promises in a written contract or, in rare cases, where security prevents signing of a contract, write a memorandum for the record of the commitments.

JSW/DWS/9 May 1949

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